IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 86 (S/B) of 2005

Pooran Chandra S/o Late Sri Leeladhar,
R/o 35-Baldevpuri Extension, Mohali Road,
Mathura, U.P.

... Petitioner

Vs

1. State of Uttaranchal through Secretary, P.W.D., Dehradun, District Dehradun
2. Chief Engineer (Garhwal Region) P.W.D. Deptt., Pauri, District Chamoli
3. Superintendent Engineer, P.W.D., 38 Circle Goopeshwar, District Chamoli
4. Executive Engineer, Provincial Division, Public Works Department, Gopeshwar, District Chamoli

... Respondents

Dated: May 22, 2006

Sri Rakesh Thapliyal, learned counsel for the petitioner.
Sri K.P. Upadhyaya, learned standing counsel for respondents

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the impugned order dated 18.03.2005 passed by the Chief Engineer (Respondent No.2) (Garhwal Division) Public Works Department, Pauri.

Briefly stated facts of the case are that the petitioner was appointed as a Junior Engineer through Public Service Commission and thereafter he got promoted to the post of Assistant Engineer in the month of October, 1994 and subsequently after attaining the age of superannuation, the petitioner was retired from service on 31.12.2004. The petitioner was posted as Junior Engineer in the month of September, 1988 and he was directed to construct a building of 74 bedded tourist rest house for the U.P. Tourism Department. Consequently,

w.e.f. September, 1988, the construction of the building was started under the supervision of Executive Engineer and the work was completed in the month of September, 1993 alongwith two quarters of Type-III. Thereafter, after completion of the building alongwith two quarters of Type-III and also for the purpose of construction of two quarters of Type-I, a revised estimated of Rs.63 lacs were sent to the department, however the said estimate could not be sanctioned due to which remaining two quarters of Type-I could not be constructed. The entire building was handed over to Garhwal Mandal Vikas Nigam in September, 1993. After five years, the petitioner was asked to furnish the relevant documents pertaining to the material at site and the records pertaining to the material which was used in the construction. Since all the relevant records were already furnished to the department at that relevant time, therefore, the petitioner by means of his representation dated 2.11.1998 sought one month time for furnishing the details, if any and the petitioner submitted the details as were required.

Thereafter, in the year 2002, the petitioner was asked to furnish an explanation with regard to the use of material at site and consequently again on 18.8.2002, the petitioner submitted a representation to the Executive Engineer in which he specifically stated that the material at site was used in the construction of the building and in this regard the then Superintendent Engineer Sri H.S. Bhakuni also enquired and certified that the material at site has been used in the construction of building. It appears that the Government was not satisfied with the reply of the petitioner and thereafter an enquiry was initiated against the petitioner. Thereafter, a three members committee was constituted to enquire into the matter and the said Committee submitted its report on 25.11.2004 which is contained in

Annexure No.CA 4 to the counter affidavit. The said committee was consisting of Executive Engineer, Assistant Engineer and the Junior Engineer. The Committee had reported that the material used at site has been used prior to the transfer of the building but what was the quality of use of the material, could not be ascertained. The Committee also submitted that an explanation may be called from the Junior Engineer concerned i.e. the petitioner to enquire that from which the agency the work has got been done and the concerned officer may also be directed to produce the measurement book. Thereafter, by an office letter dated 20.12.2004 issued by the Superintending Engineer, the petitioner was intimated that after the spot inspection, it was found that the material at site has been used in the construction of the building prior to its handing over to the G.M.V.N. In the said letter, it was also stated that after the spot inspection it could not be ascertained that what and when the materials were used in the construction and therefore the necessary information was also sought to be furnished to this extent. On 31.12.2004, the petitioner after attaining the age of superannuation was retired from the service. Thereafter, on 18.3.2005, the impugned order was passed by Respondent No.2 whereby on the recommendation of the Superintending Engineer by letter dated 24.02.2005, the directions were issued to recover the amount of Rs. 5,38,982,40 lacs as dues from the petitioner. Feeling aggrieved, the petitioner has come up in the writ petition.

We have heard learned counsel for the parties and perused the entire evidence on record.

There is nothing on record to show that how the respondents came to the conclusion that the Government has suffered a loss of Rs.5,38,982.40 on account of misconduct of the petitioner. Only a

Straightway recovery certificate has been issued to the petitioner after his retirement.

It is not disputed that the recovery of the said amount is a minor punishment and the recovery sought has been made after giving show cause notice requiring an explanation from the petitioner but this procedure is applicable in case of an employee who is in service. This procedure cannot be adopted in case of a retired government servant.

It is not in dispute that no departmental proceedings were ever held against the petitioner while he was in service relating to the misconduct of the petitioner which resulted in loss to the Government.

Rule 351-A of Civil Service Regulation clearly provides that the Governor reserves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to the Government by misconduct or negligence, during his service, including service rendered on reemployment after retirement. Provided that such departmental proceedings have been initiated while the government servant was in service or within four years after the retirement from service. The departmental proceedings can be initiated only after prior sanction by the Governor for initiating the proceedings against the retired government servant.

Admittedly, no departmental, proceedings were initiated against the petitioner during the period he was in service and after retirement also, no proceedings were drawn after the sanction of the Governor. Therefore, the recovery order passed by Respondent No. 2 is in violation

of Rule, 351-A of the Civil Service Regulation. Thus, the impugned order cannot be sustained in the eye of law. The impugned recovery order is hereby quashed. The petition is allowed accordingly. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang